



Arthur Liman Center for Public Interest Law

March 24, 2021

Re: Testimony submitted for the Record in Support of H.B. 5390, an Act repealing statutory provision that impose liability on an individual for repayment of the costs incurred when the individual was incarcerated, hearing held on March 25, 2022 before the Judiciary Committee

Dear Chairs Winfield and Stafstrom; Vice Chairs Flexer and Blumenthal; Ranking Members Kissel and Fishbein; and members of the Judiciary Committee:

We write in strong support of H.B. 5390 to repeal Connecticut's incarceration lien, colloquially known as "Pay to Stay." The Arthur Liman Center for Public Interest Law at Yale Law School has worked for the last year in conjunction with a coalition of community based stakeholders to explore the effects of this lien on individuals against whom it is levied, and on our state and the members of our communities. In order to understand the impact and motivations of the lien, we spoke to lawmakers; state officials, including officials with the Department of Corrections ("DOC"), the Department of Administrative Services ("DAS"), and parole officers; economists, policy analysts, legal academics, and medical professionals who study the impact of court and incarceration based debt; lawyers litigating incarceration based debt; re-entry professionals; and affected citizens. In addition, we researched collection rates in Connecticut and nationwide trends around incarceration liens.

Based on this extensive research, as this testimony describes, we concluded that the imposition of the incarceration lien creates economic and health burdens on Connecticut's most vulnerable populations, serves as an impediment for re-entry for many, increases recidivism rates for some, and carries little economic benefit for the state. Beyond this, implementation of the incarceration lien carries constitutional concerns. Lack of transparency and notice around methods of collection, assets subject to the lien, and the per day cost imposed not only creates confusion among current and formerly incarcerated people about the scope and impact of the lien, but also raises due process concerns under the Sixth and Fourteenth Amendment to the U.S. Constitution and questions regarding the punitive nature of the lien under the Eighth Amendment. Other states have already acted in response to the extreme negative impacts of such liens. In 2019, for example, Illinois

repealed its lien.<sup>1</sup> State Senator Robert Peters, the sponsor of the repeal bill, summarized the case against the incarceration lien: “Pay-to-stay is morally wrong. These folks are already being punished for their crimes by being locked up. It’s unconscionable that we would place them into indentured servitude upon their release.”<sup>2</sup>

H.B. 5390’s repeal of the incarceration lien in Connecticut recognizes the harmful effect of incarceration based debt and seeks to address that harm by removing this source of debt. Below, we provide an overview of our research findings to explain why the repeal of this lien is critical.

## **The Mechanics of the Incarceration Lien in Connecticut**

### ***A. Statutory Basis for the Lien***

Connecticut enacted Connecticut General Statute Sections 18-85a to -85c in 1985. In its current form, Section 18-85a(b) provides that the state has a claim against any incarcerated person for the cost of their incarceration “for which the state has not been reimbursed.” Under the statute, certain property is exempt from the State’s claim, including most property acquired after release. However, the state’s claim extends to post-release lottery winnings, inheritances, and lawsuit proceeds.<sup>3</sup> The state can collect up to 50% of the inheritance or settlement, or whatever amount is necessary to satisfy the lien—whichever is lesser. There is no statutory limitation on recouping the costs of lottery winnings. Section 18-85c allows the state to place a lien against a formerly-incarcerated person’s estate upon their death, for all costs of incarceration for which the state has not been reimbursed, minus the amount that surviving spouses, parents, or dependent children of the decedent would require for their support.<sup>4</sup> Assessed costs associated with the lien can reach over one million dollars,<sup>5</sup> which means that people can lose their entire inheritances to state lien collection.

### ***B. Collection***

On an administrative level, the Recovery Unit of Department of Administrative Services (DAS) Collection Services is responsible for collecting on state liens, including the incarceration

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<sup>1</sup> Peters Ends “Pay to Stay”, Senator Robert Peters (May 31, 2019), <https://www.senatorrobertpeters.com/news/press-releases/38-peters-ends-pay-to-stay>.

<sup>2</sup> *Id.*

<sup>3</sup> The Attorney General has the authority to bring action in state court to enforce the collection of these debts, as long as the action is commenced within two years from the individual’s release from prison, or if the inmate dies while in state custody, within two years of the individual’s death. Section 18-85b allows the state to make a claim under the incarceration lien against a person’s inheritance (whether money or property) or legal settlement within twenty years of the person’s release from custody.

<sup>4</sup> For example, according to §17b-84, the state must allow estates to retain \$375 towards costs of “final sickness,” funeral expenses of up to \$1350, child support, restitution to crime victims, and payment of civil judgments to crime victims.

<sup>5</sup> Documents the Liman Center has procured from those affected by the lien have showed a cost of incarceration of over \$1,300,000.

lien. The process by which the state collects differs depending on the source of the individual's income or assets. When a person receives a settlement in a lawsuit or an insurance payout, for example, their attorney submits a letter to DAS acknowledging receipt of payment. By contrast, if the lump sum or asset is inherited, DAS receives notice from the probate court through the PC-200 form.

Once DAS receives notice of additional income or assets from any of these sources, the Recovery Unit will inquire with state agencies as to any liens the identified individual has outstanding. If the person is currently incarcerated or has been incarcerated, the Department of Correction (DOC) will provide DAS with a "total cost of incarceration." This total cost is calculated based on a designated daily rate for incarceration and on additional costs that an incarcerated person might incur as a result of "inmate-initiated" medical care and programming. This cost does not appear to be tied specifically to costs *actually* incurred as a result of an individual's incarceration, nor do they account for artificially deflated wages paid to these individuals or artificially inflated costs of commissary items paid by these individuals as will be discussed below. Instead, the basis of the daily rate and designated costs, despite extensive efforts to locate the basis of it, remains obscure to us.

Once DAS determines the total owed, the Recovery Unit will also determine how much it actually plans to collect from the interested party. Because the state is a "preferred creditor," it takes precedence over other claimants to the individual's property. DAS deducts allowable expenses from the total asset amount (e.g., medical expenses, attorney's fees, litigation expenses, real estate taxes, closing costs, funeral reimbursement) and then collects on the outstanding state liens, starting with those related to federal assistance (e.g., Title 19 Medicaid long-term care) and proceeding to state liens, such as the incarceration lien. It is important to note that the incarceration lien is only enforced after all other state liens are satisfied – including liens imposed as a result of restitution or other state based mechanisms of crime victim compensation. No portion of the incarceration lien goes to crime victims.

From our research, it is not clear how DAS makes incarceration lien collection decisions. It appears to be a mix of many factors, including whether or not DAS has been notified of an inheritance or settlement; whether or not the person is currently incarcerated allowing their Inmate Trust Fund to be constantly monitored by the state; and possibly how likely the state believes it can collect on the lien from an individual. From our interviews with state officials and advocates, we know that the state pursues the liens against the currently incarcerated very aggressively. From our discussions with administrators at DAS, we also know that these incarcerated individuals are very rarely able to mount a legal defense. Documents from DAS further demonstrate that the state has attempted to collect on very small amounts of money (as low as \$45.81). We learned from our interview subjects that people can have the incarceration lien placed against them multiple times, as long as DOC has some proof that there are unsatisfied costs of incarceration. The last year we were able to locate data for, FY19, the state collected \$6,090,076.34 for the incarceration lien. This represents less than 1% of the State's total annual budget.

## **The Punitive Reality of the Incarceration Lien**

The lien is often described as requiring incarcerated people to pay for costs associated with imprisonment. This description, however, belies the reality of the lien and sentencing policies. Lien amounts appear to be disconnected from costs *actually* associated with periods of incarceration. While individuals are charged a per day rate under the lien, this rate does not appear connected to the actual costs associated with incarceration. In addition, as discussed above, money collected in satisfaction of the lien does not return to the Department of Corrections but goes to the state's general fund, further suggesting a disassociation with the articulated purposes of the lien – to recoup costs – and the reality of its enforcement.

Our research has not yielded a definitive method by which costs are calculated for an individual. We do know that the price have risen dramatically over the past 30 years. Documents received from DAS demonstrated that in 2002, rates were around \$96 per day. In 2019, the rate was \$224. This increase in cost far exceeds inflation rates for this time period. It has been impossible for us to determine, however, how DOC arrives at these rates. And, unfortunately, when DOC informs DAS of these per diem rates, they do not provide an itemized list or any equation for their overall assessed cost.

Even if costs of incarceration were linked to the lien, the calculation is complicated by a variety of facts. First, the lien would continue to create significant economic burdens on incarcerated and formerly incarcerated individuals and their families, contributing to intergenerational debt and wealth gaps. It is difficult to calculate the exact amount of such burdens and disproportionate impacts. Second, the lien is imposed in addition to, not in lieu of, an individual's sentence. As a result, the lien creates an additional punitive burden on those who have completed their debt to society. To characterize the lien as repaying an existing or lingering debt is therefore inaccurate.

Third, the prison economy distorts costs and debt associated with periods of incarceration. Little within a prison operates on a free market economic rate. Incarcerated people in Connecticut work for far less than minimum wage –in 2017, for example wages ranged from \$0.13 to \$1.50 per hour when the state minimum wage was roughly \$10 per hour.<sup>6</sup> Incarcerated individuals also pay higher costs for basic items – including hygiene products, food, and personal items at commissary. Coupled with sub-minimum wage pay, even basic necessities are unaffordable for many economically marginalized incarcerated individuals. Medical co-pays, which appear at first blush to be below free-world rates at \$3.00,<sup>7</sup> are in fact disproportionately high when viewed in the context of a prison economy. With hourly wages set at \$0.13 per hour, a person must work over 23 hours to afford one visit to the doctor; the equivalent co-pay at minimum wage for non-incarcerated individual would be \$233.08.<sup>8</sup> The cost of other basic items are equally inflated. A bar of Dove soap in Connecticut prisons costs \$1.63.<sup>9</sup> At the state's minimum wage, the cost of this soap amounts to a fraction of an hour's wages. In contrast, at an incarcerated person's minimum wage, it would take more than 12 hours to earn. Ultimately, the depressed wages and inflated prices associated with the prisons' economy create a de facto payment for incarceration – the state benefits from low wages paid for labor performed and from

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<sup>6</sup>*How much do incarcerated people earn in each state?* Prison Policy Initiative (2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>

<sup>7</sup> *The steep cost of medical co-pays in prison puts health at risk*, Prison Policy Initiative (2017), <https://www.prisonpolicy.org/blog/2017/04/19/copays/>

<sup>8</sup> *Id.*

<sup>9</sup> General Population Commissary Order Form, <https://portal.ct.gov/-/media/DOC/Pdf/CommissaryOrderFormpdf.pdf>.

disproportionately high prices attached to goods and services provided to this literally captive audience.

Fourth, the quality of life, goods, and services in prison is lower than that of the free world, and COVID-19 has only exacerbated such living conditions. The inability to social distance in the carceral facilities, the lack of personal hygiene products (and the high relative costs of those that are available), the absence of other preventive medical options, and high rates of pre-existing medical conditions among an increasingly aging incarcerated population all artificially inflate the costs of incarceration by increasing medical expenses.

Some facilities exhibit particularly bad conditions. At Osborn Correctional Institution, for example, asbestos in the facility and contaminated water led to an outbreak of Legionnaires' disease.<sup>10</sup> In this and other facilities, individuals have been denied medical care,<sup>11</sup> and have experienced improper sanitation procedures and violence at the hands of correctional officers.<sup>12</sup> Even basic needs are often not met. Incarcerated people have lived without heat during frigid winter days,<sup>13</sup> and often lack access to calorically sufficient and edible food.<sup>14</sup> One study found that food provided to incarcerated inmates was often inedible as a result of decay and frequently provided fewer than the recommended daily minimum caloric intake for an adult.<sup>15</sup> People in Connecticut's prisons, particularly those with mental illness, also suffer abuse in the form of prolonged isolation, in-cell restraints, and other forms of mistreatment in prison.<sup>16</sup> In short, those in prisons across the state pay to stay in facilities where they are exposed to hazardous materials, lack access to proper health care, freeze and starve, and suffer restraint and isolation in the midst of crisis. For this, the state of Connecticut assesses a cost of \$224 per day or \$81,760 per year.

Simply put, the notion that pay-to-stay is about financial responsibility is belied by the distortions of the prison economy and the undergirding of state coercion: individuals are severely underpaid for the work they do (and may not organize for higher wages) and overcharged for sub-par goods, services, and accommodations. Understood in this context, the incarceration lien

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<sup>10</sup> Nick Aresco, *Rally held over inhumane living conditions at correctional facilities across Connecticut*, <https://www.wvlp.com/news/connecticut/rally-held-over-inhumane-living-conditions-at-correctional-facilities-across-connecticut/>; John Mortiz, *Lawsuit: CT prison had 'brown, cloudy' water years before Legionnaires cases*, <https://www.ctinsider.com/news/article/Lawsuit-CT-prison-had-brown-cloudy-water-16593261.php>.

<sup>11</sup> Jack Dutton, *Inmates are dying in Connecticut's prisons due to medical negligence*, <https://www.newsweek.com/inmates-dying-connecticut-prison-medical-negligence-1614638>.

<sup>12</sup> Razel Suansing, *"It's like we're hostages": Connecticut Bail Fund teach-in reveals prison conditions during COVID-19 pandemic*, <https://yaledailynews.com/blog/2020/11/12/its-like-were-hostages-connecticut-bail-fund-teach-in-reveals-prison-conditions-during-covid-19-pandemic/>.

<sup>13</sup> John Moritz, *A Connecticut prison was without heat for part of the day on Christmas, officials say*, <https://www.ctinsider.com/news/article/A-Connecticut-prison-was-without-heat-for-part-of-16733469.php>.

<sup>14</sup> *Eating behind bars: Ending the hidden punishment of food in prison*, Impact Justice, <https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars.pdf>.

<sup>15</sup> *Id.*

<sup>16</sup> Tatiana Flowers, *Judge hears arguments in suit alleging abuse in CT prison system*, <https://www.ctpost.com/news/article/Judge-hears-arguments-in-suit-alleging-abuse-in-16141974.php>.

charges individuals for costs that they have already born through the layered injustices of the prison economy.

Even if one accepted that it is appropriate to charge incarcerated individuals a fee for the time they spend in prison – a dubious proposition as discussed above – the lien amount itself appears untethered to actual incarceration costs. A review of DAS collection data places the per day incarceration lien in Connecticut for 2021 at \$224. Subtracting the \$55.00-\$71.00 allotted for food and incidentals approved under the state’s per diem policy, the daily “rent” for a prison cell in Connecticut remains staggeringly high -- between \$169 and \$153, well above even the highest the approved per diem rate per night for state government employees.<sup>17</sup> Even if this per day lien rate did in fact reflect the cost of a night spent in a carceral facility, funds recovered through lien collection do not revert to the Department of Correction, the money goes into the general fund. That the incarceration lien is not serving any identifiable budgetary need suggests that its function is not compensation.

If Connecticut’s pay-to-stay practice does not promote financial responsibility and does not actually compensate the state for the cost of incarceration, then it is not actually about “paying one’s way,” but instead about imposing another form of punishment on people who have already been sentenced and punished.

## **Pay-to-Stay Undermines Reentry Goals**

Connecticut’s incarceration lien is one of several fines and fees imposed on defendants by the state’s criminal courts. It is well documented that fines and fees, also known as monetary sanctions and legal financial obligations (LFOs), thwart the goals of rehabilitation and reentry that the criminal legal system purports to support by creating and contributing to insurmountable cycles of debt, which restricts economic mobility, undercuts physical and mental health, and increases the likelihood of recidivism.<sup>18</sup> Although the incarceration lien differs from other fines and fees in certain ways,<sup>19</sup> it can have the same negative impacts on reentry: pay-to-stay policies result in prolonged attachment to the criminal justice system. What’s more, the impact of the lien—whether enforced or threatened—is felt not only by the incarcerated individual but by their family and community. Simply put, the incarceration lien, like other court-imposed fines and fees, creates cycles of intergenerational poverty that undermine the stability of released and incarcerated individuals and their communities.

This section provides an overview of the detrimental economic and medical impacts of fines and fees and the incarceration lien in particular. We also present findings from our qualitative interviews with individuals impacted by the incarceration lien in Connecticut, which mirror the findings of fines and fees research from across the country. The significant economic, medical, and social consequences of incarceration liens – by perpetually tethering charged individuals to debt – pose significant barriers on the path to their reentry.

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<sup>17</sup> For state government per diem rates, *see* <https://www.perdiem101.com/conus/2021/connecticut>.

<sup>18</sup> Alicia Bannon, Mitali Nagrecha, Rebekah Diller, *Criminal Justice Debt: A Barrier to Entry* (Brennan Center for Justice, 2010)

<sup>19</sup> E.g., it purports to be compensatory rather than punitive, is often conditionally imposed or collected on receipt of income or assets, and is a lien as opposed to an imposed fine or fee that is imposed at sentencing.

## *Economic Impacts*

Imposition of the incarceration lien, like other fines and fees, can lead to lost income and heightened financial stress.<sup>20</sup> The possession of legal debt and resulting poor credit can constrain opportunities, limit access to housing, education, and job markets, and create intergenerational poverty and wealth gaps.<sup>21</sup>

In particular, legal financial obligations such as the incarceration lien can prevent incarcerated and formerly incarcerated individuals from accumulating wealth. Research demonstrates that “incarceration is significantly and detrimentally associated with asset ownership among men” and women who share children with incarcerated men. Incarcerated men are less likely than their counterparts to hold bank accounts, own vehicles, or own homes.<sup>22</sup> By reducing inheritances and cutting into legal settlements and insurance payments intended to make incarcerated and formerly-incarcerated individuals whole,<sup>23</sup> the incarceration lien prevents these individuals from saving and investing those assets, building intergenerational wealth, and paying for the full suite of services and goods that may be needed after an accident or injury.

Financial obligations created by the incarceration lien carry greater impact upon release—the exact moment when formerly incarcerated individuals are often in desperate need of funds to cushion the significant consequences that follow from a long prison stay and a criminal record. These consequences include difficulties obtaining employment and livable wages, an inability to secure affordable and adequate housing, and health care needs. At this juncture in reentry, funds available from inheritances, legal settlements, and insurance payments can serve as critical lifelines. A recent pay-to-stay study explains that “these funds constitute the whole of the assets of these individuals who face often insurmountable odds for gainful employment upon release. . . . [T]hese are individuals who have often spent years, if not decades, in prison, hoping these small amounts of inheritance or settlement payments will sustain them through their reentry process.”<sup>24</sup> Incarceration liens deprive individuals of these monetary lifelines at a critical time in their reentry and may jeopardize their success in reentry.

Monetary sanctions can also exacerbate debt that individuals may have accrued pre-incarceration. As public health researchers describe:

Debt prior to criminal justice involvement is intensified and complicated by incarceration. Existing debts go unpaid after arrest, are layered on by additional debts incurred during incarceration and the judicial process, and are further layered upon by

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<sup>20</sup> Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 Am. J. of Soc. 1753 (2010).

<sup>21</sup> Id. See also Alicia Bannon, Mitali Nagrecha, Rebekah Diller, *Criminal Justice Debt: A Barrier to Entry* (Brennan Center for Justice, 2010)

<sup>22</sup> Kristin Turney and Daniel Schneider, *Incarceration and Household Asset Ownership, Demography* (2016).

<sup>23</sup> These are not “windfalls.” These settlements are compensation for losses already incurred and losses anticipated.

<sup>24</sup> Fernandes, April D., Brittany Friedman, and Gabriela Kirk. (Forthcoming 2022). “The ‘Damaged’ State vs. the ‘Willful’ Nonpayer: Constructing Damage, Harm, and Willfulness through Pay-to-Stay Lawsuits.” RSF: The Russell Sage Foundation Journal of the Social Sciences.

debts incurred post release. These latter debts are often caused in part by the prior debts; damaged credit and unpaid bills as well as unpaid loans from friends and relatives make it difficult to get a phone, find a good job, buy a car, rent an apartment, or open a utility account. The inability to put these essentials in place in turn increases the likelihood that the person will need to borrow simply to survive.<sup>25</sup>

Importantly, incarceration-related debt does not just affect the incarcerated and formerly incarcerated individuals whom it targets. The Center for Community Alternatives has found that “[legal] debt is paid not only by those convicted of crimes, but also by their families (or friends) who are the last stop before re-incarceration.”<sup>26</sup> Family and friends often provide assistance in reducing their loved ones’ debt. Incarceration liens therefore extract income and wealth not just from individuals against whom the lien is levied, but also from entire communities.<sup>27</sup> This in turn creates a burden on those who may themselves have suffered from loss of income due to the incarceration of their loved one.<sup>28</sup> Individuals against whom the incarceration lien is levied may also suffer dignitary harms associated with feeling dependent on friends and family for support.<sup>29</sup>

In addition, the economic impacts of monetary sanctions like the incarceration lien likely have racially disparate impacts: “the vast racial disparities in wealth combined with the significant racial disparities throughout the criminal justice system and the monetary sanctions that accrue at each step of case processing create enormous potential for these sanctions to worsen racial disparities.”<sup>30</sup> The most recently analyzed census data reveals that these racial disparities exist in Connecticut’s prison system: 10% of the Connecticut state population identifies as Black, but 41% of Connecticut’s prison and jail population is Black.<sup>31</sup> Latinx people represent 13% of the overall population in the state, but 29% of the prison population.<sup>32</sup> This is compared to the white population, who represent 71% of the overall state population, but only 31% of the prison and jails population.<sup>33</sup>

### ***Medical Impacts***

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<sup>25</sup> Annie Harper, Tommaso Bardelli, and Stacey Barranger, “Let Me Be Bill-free”: *Consumer Debt in the Shadow of Incarceration*, Sociological Perspectives (2020)

<sup>26</sup> Mitali Nagrecha et al., *When All Else Fails, Fining the Family: First Person Accounts of Criminal Justice Debt*, Center for Community Alternatives (2015). See also Ella Baker Center for Human Rights, Forward Together, and Research Action Design, *Who Pays? The True Cost of Incarceration on Families* (September 2015).

<sup>27</sup> *Id.*

<sup>28</sup> Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration* (Brennan Center for Justice, 2015)

<sup>29</sup> Breanne Pleggenkuhle, *The Financial Cost of a Criminal Conviction: Context and Consequences*, 45 *Crim. J. and Behavior* 125 (2018).

<sup>30</sup> Karin D. Martin, *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 *Ann. Rev. of Crim.* 471 (2018).

<sup>31</sup> *Racial and ethnic disparities in prisons and jails in Connecticut*, Prison Policy Initiative (2016), [https://www.prisonpolicy.org/graphs/disparities2010/CT\\_racial\\_disparities\\_2010.html](https://www.prisonpolicy.org/graphs/disparities2010/CT_racial_disparities_2010.html).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



In addition to economic harms, the medical impacts of monetary sanctions can be severe. Studies suggest that legal debt and prison payment policies can deter prisoners with legitimate health problems from seeking appropriate medical care. For instance, “[o]ften prisoners will do without hygiene items or medical treatment rather than have their families deposit funds that will be immediately confiscated to satisfy prison charges.”<sup>34</sup> The chilling effect of these debt collection policies can have serious consequences, not only for incarcerated individuals in need of medical care, but for anyone who visits or resides in prison facilities. As the ongoing COVID-19 pandemic illustrates all too clearly, the spread of communicable diseases in jails and prisons affects prisoners, correctional officers, maintenance staff, volunteers, and medical personnel alike.

In addition to impacting medical decisions, a large body of academic research suggests that financial debt can have a significant impact on mental and physical wellbeing. Indebtedness or increases in debt levels contributes to the development of mental health problems including higher stress levels, anxiety, and depressive symptoms. Indebtedness has also been linked to other forms of health-related behaviors like drug abuse, alcohol consumption, and—related to its impact on medical decision-making—under-investments in health. Repealing the lien will significantly impact reentry and decrease the likelihood of recidivism, which contributes to increased costs of incarceration. The costs of incarceration create a destructive cycle of incarceration that could be avoided with the repeal of this statute.

## **Pay-to-Stay is Cost Inefficient**

Fines and fees, including pay-to-stay policies, not only undermine goals of rehabilitation and reentry, but also fail at raising revenue for the state, due to the high costs of collection and enforcement and the regressive impact of these debts on low-income people.<sup>35</sup>

In the 2019 fiscal year, the state of Connecticut collected a total of \$57,439,413.55 from all of the liens it places upon its residents.<sup>36</sup> This sum includes the following departmental liens: Department of Social Services Child Support, Department of Families and Children, Department of Correction, Department of Social Services Managed Care, Department of Social Services Bills, Department of Social Services medical programs, Department of Social Services Health Maintenance Co, Department of Services in Patient Care, and Mortgage Interest. Of this total amount, the only funds collected for the incarceration lien was \$6,090,076.34.<sup>37</sup>

This \$6 million is an extremely small fraction of the overall state budget. For example, in the summer of 2019 Governor Lamont passed a two-year state budget of \$43.4 billion.<sup>38</sup> If rates

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<sup>34</sup> See Pat Nolan, *Inmate User Fees: Fiscal Fix or Mirage?*, Am. Corr. Assoc. (Aug. 2003) (citing to the National Prison Project Journal).

<sup>35</sup> Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison, and Michael Crowley, *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center for Justice (2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

<sup>36</sup> Collections OLR Report, Department of Administrative Services.

<sup>37</sup> *Id.*

<sup>38</sup> Keith M Phaneuf, *Lamont signs new budget, says it will bring stability to CT*, CT News Junkie (2019).

of collection stay the same, the amount collected on DOC liens represents .03% of the state budget. In contrast, our research and interviews demonstrate the extreme impacts that the \$6 million has on those returning home from prison.

Beyond this, as noted above, *none* of the money collected on the incarceration lien goes back to the Department of Correction. Instead the collected funds revert to the general budget. In addition, thinking of this \$6 million dollars as net gain for the state ignores the administrative costs of this lien. DAS efforts to collect the lien are not free. These efforts not only carry downstream economic consequences for those against whom the lien is levied which effects the economy of the state, but DAS resources are devoted towards the collection of the lien.

## **Pay-to-Stay Undermines Property and Procedural Rights**

In addition to detrimental economic and medical impacts and cost inefficiency, Connecticut's pay-to-stay practice undermines the property rights of individuals and families affected by incarceration. These rights are unsettled because the process of lien enforcement is opaque, meaning that individuals may make decisions about their income, expenditures, and real property before they know that the lien will be enforced against them.

Our research and interviews with affected individuals suggest that incarcerated people are afforded inadequate or no notice of the possibility that their property may be seized to satisfy an incarceration lien. Our interview subjects who were incarcerated at the time of their inheritance, found out that there was a lien on their account only when their Inmate Trust Funds were frozen. Those who were out of prison at the time of the lien were not aware that the state was planning to seize their legal settlements until *after* they had already negotiated the settlement. According to our examination of sentencing packets, it does not appear that individuals are notified about the possibility of collection on income or assets received by legal settlement or inheritance specifically. The inadequate notice issue is even more serious for a group of defendants sentenced before 1995, when the pay-to-stay law was enacted, who have nevertheless had their property seized in collection on an incarceration lien.

This lack of notice, retroactive application, and cost of the lien each raise potential constitutional issues. First, there is a notice issue implicating the promise of due process, as people are not made aware at the time of their sentencing that they will be subject to this lien, nor are they informed of the amount or basis for the lien amount. This lack of transparency around the existence of and the calculation of the incarceration lien suggests that the state has constructed insufficient procedural protections. In addition, the absence of formal notice around the lien can cause economic, physical, and psychological stress and insecurity, as incarcerated people rely on informal networks to gather information about the cost associated with the lien and collection methods. Uncertainty is exacerbated by haphazard and generally opaque collection processes. This uncertainty surrounding the collection process may impact how affected individuals make financial decisions, structure their inheritance, and negotiate their legal settlements.

In addition, the lien subjects some people to an *ex post facto* sanction because they were sentenced *before* the incarceration lien law was enacted. The lien also potentially represents an excessive fees in violation of the Eighth Amendment.

Beyond these constitutional concerns, there are underlying policy concerns implicated by the incarceration lien beyond those described above. The U.S. Court of Appeals for the Second Circuit has noted, for example, that the imposition of the lien on legal settlements disincentivizes

the state from not violating the rights of incarcerated and formerly incarcerated people by significantly decreasing the real cost of section 1983 awards, as the state may reclaim up to half of the settlement in the form of the lien. *Williams v. Marinelli*, 987 F.3d 188, 203 (2021).

Likewise, enforcement of the incarceration lien against inheritance undermines the financial autonomy and property rights not just of individuals, but also of families and social networks. In particular, the looming threat of pay-to-stay property seizure may dissuade a family member or loved one from leaving property or assets to an inheritor who is or was incarcerated. As such, the pay-to-stay law infringes on the freedom of individuals to devise their property, which is a “cornerstone of the modern law of succession.”<sup>39</sup> The putative inheritor’s “freedom of inheritance” is, of course, also constrained; even if their parent or loved one chooses to leave an inheritance, the incarcerated or formerly-incarcerated individual may feel pressured to reject the testamentary gift so that the property is not seized as a result of the incarceration lien. Pay-to-stay’s potential impacts on the freedom to dispose of property and the freedom to inherit are not only troubling on their own, but also, as described above, because they may disproportionately inhibit wealth-building among low-income communities and communities of color based on the demographic composition of Connecticut’s prison population.

## **Lived Experiences of Pay-to-Stay in Connecticut**

In the course of our research, our team has conducted a series of interviews of individuals who were formerly incarcerated and have had money or assets seized due to the incarceration lien. These conversations corroborate and magnify the findings above and the existing secondary literature. In particular, there were four distinct themes that arose from the interviews:

### ***Reentry***

One individual, JR, described that had he not been able to keep some of his inheritance, he would have had to choose between homelessness or re-offending in order to survive. Another interview subject, MR, said:

You shouldn’t have to be punished again. You come home to nothing, so you need a place to stay. Some people are coming straight home, others are going a halfway house. And those coming straight home come home to nothing, you might resort to old habits.

These “old habits” prevent a successful reentry into society. Making people return home to nothing can influence their ability to living a law-abiding lifestyle. One woman, TB, said that the incarceration lien carries long term implications for an individual’s reentry. She was in prison for a short drug possession sentence in the late 1990’s. She has been sober for the last nineteen-and-a-half years and has never reoffended. Her family’s home is now subject to Connecticut’s incarceration lien. When asked to describe how she thought the lien affects the incarcerated, she said:

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<sup>39</sup> Mark Glover, *Freedom of Inheritance*, 2017 Utah L. Rev. 283, 284 (2017); see also Restatement (Third) of Prop.: Wills and Donative Transfers § 10.1 cmt. a (2003); Robert H. Sitkoff, *Trusts and Estates: Implementing Freedom of Disposition*, 58 St. Louis U. L.J. (2014).

You don't think when you are coming up, that by getting in trouble, it will affect you for the rest of your life, even when you've turned your life around, for something of this magnitude, I think it's wrong. It's another knock down. I have no idea where I'm going to go, and for them to take what little I have to live...how do you do that to people?

### *Medical and Economic Impacts*

DM, another interviewee, experiences the long term medical impact of the lien both inside and outside of prison. While he was incarcerated, he spoke about the difficult medical decisions that a person has to make knowing that the cost of medical care will increase the lien amount. Currently, the only medical visits that do not incur a \$3 charge are emergencies. It is a high bar for something to be defined as an "emergency." DM could only think of a few instances in which individuals had medical procedures defined as an emergency under the policy (for stabbings and heart attacks). While these conditions surely require emergency medical care, they are not the only form of immediate and urgent medical issues. DM described the jaw pain he began to experience when he was in prison. He hesitated in seeking medical attention because he knew that he would be charged \$3 for the visit, and he could not afford that when he was paying for the rest of his necessities at the commissary. When he could no longer withstand the pain, he told a corrections officer, who explained that DM would have to wait until it was his cell block's day to go to medical. When he did go, he was charged the \$3 even though by the time he saw the doctor he was having an emergent condition: his wisdom teeth had become impacted. The doctor performed surgery but neglected to give him penicillin. A week later, his jaw was so infected he could not open it. Still, he was taken to the doctor as a non-emergent case, and charged the \$3. The doctor finally prescribed him penicillin, and his jaw eventually healed, but the experience demonstrated to DM how dangerous it was to make health decisions based upon the high prices they were charged.

When DM was released, he was in two separate car accidents where he was hit from behind. He received two different settlements, and the state placed a lien on both of them. He was able to keep only the money needed to fix the car and his immediate medical impacts. The state took the rest. This felt wrong to DM:

This [settlement] is designed to make you whole. So, to have that amount reduced that's leftover that can be used for unforeseen damages, such as PTSD, you may need to get mental health counseling, therapy, things of that nature that your insurance doesn't cover fully...so these proceeds that are meant to make you whole...that is what the rest of the compensation is for...to take that from a person who has been incarcerated, it goes against the reason why the law awards that in the beginning.

After the accidents, DM wanted to see a therapist for the PTSD he developed, but without the rest of his settlement he could not afford to do so

MR spoke about the uneven economic impacts of the lien. He left prison with a lien of \$1,300,000 for his fourteen years in prison despite the fact that he had worked the entire time he was in prison. He knew he would never have enough money to repay that bill, and he had already had the insurance money he received after his mother's death (about \$11,000) seized by the state. The wages he made in prison were well below any livable minimum wage in this country. As a janitor, he made 75 cents a day. As a Certified Nursing Assistant, he made his highest wages, \$1.75 a day. The prices in commissary were significantly higher than the same goods in the free

world. He felt that it was unfair to have him work every day for fourteen years for such low wages, but to charge such high prices for everything within prison. Similarly, DM characterized the lien as a poverty tax:

The majority of the people in prison come from backgrounds of poverty, deficient educational systems, ignorance, lack of resources or from a community that is denied resources, people who are already disenfranchised, those are the majority of people in prison. So, when you create a law like this, it's really suspicious. You're going to penalize, don't get me wrong, we have to be held accountable, to issues of public safety, and decisions which harm people, or take property from other people I understand that, but you are penalizing people...you're being penalized for being poor.

TB says the experience of the lien has produced a lot of psychological pain. In the few weeks before the state put a lien against her house, her son was killed and her mother died. After her mother's death, TB inherited her mother's house. While planning the funerals, and grieving, she had to fight to keep the family home that she and her four siblings inherited. Reflecting on the impact of the lien, TB asked, "How can people stay on track? How can people recover when they are being harassed even twenty years after they have paid their debt to society?"

All of our interviewees spoke of the psychological impacts of the lien hanging over them for 20 years: they had fear and anxiety about what would happen if they were to inherit something from their families, or if they were to die what would happen to the property that they wanted to give to their own families.

### ***Individual and Familial Autonomy***

The incarceration lien takes the choice of inheritance out of the owner's and family's hands. TB lived in her family home for fifty years. She cared for her aging mother there, paying for the renovations that made the house livable for her mother and for her disabled brother who she also cared for in the home. When she left prison nearly 20 years ago, she moved home and lived a life of responsibility: she got a job, she stayed clean, she paid all the bills in that house. Her mother left her and her siblings that house so they could continue to live there and so that her disabled son would always have a place to be at home. The incarceration lien, however, puts her mother's goals in jeopardy. TB must wait to see if the state will fulfill its promise of seizing the amount of her incarceration lien. She reflects that Connecticut's pay-to-stay policy keeps families in cycles of debt, and for their part, families have to make hard changes in order to adapt to the effects of the lien.

TB's experience is not unique, MR had to fight hard while grieving in order to keep just a few thousand dollars so that he could buy his mother a gravestone. Another individual, FH, stated that the incarceration lien harms his ability to help his family achieve social mobility as he cannot inherit money or property without it being subject to the lien. And, if he were to die he might not be able to pass on anything to his children and grandchildren. He likens the policy to those of the early 20<sup>th</sup> century that kept Black families from achieving wealth and progress. It is an apt observation, as there are twice as many Black and Brown prisoners as white ones in the

state of Connecticut, and thus the vast majority of those affected by this policy are people of color.<sup>40</sup>

### ***Notice***

None of our interview subjects knew about the lien at the time of their sentences. DM, FH, JR, and MR all were sentenced *before* the incarceration lien was even passed as legislation. This means that they were “grandfathered” into this policy. DM entered into an *Alford* plea and was sentenced to almost two decades in prison as a result. He indicated that if he had known that he would be experiencing the effects of the lien for so long, it might have made him think differently about what to do before his plea. JR only knew about the lien because of gossip around the prison. TB never knew about the lien until her lawyer told her that he had to report her inheritance from her mother to the state. The lack of transparency around the policy harms people. A lack of understanding leads to fear, anxiety, and misinformation. This is all exacerbated by the inconsistency in enforcement, which means that individuals experience this fear and anxiety for the entirety of the 20 years that they are subject to this lien.

All of our interview subjects knew that our project could not help them get their money or property back. They spoke to us because they wanted to warn people about the dangers of this policy, and they wanted this policy to change so that in the future, people can return home from prison without this debt hanging over them.

### **Conclusion: The Case for Repealing Connecticut’s Pay-to-Stay Law**

Our research has demonstrated that the Connecticut incarceration lien should be repealed. H.B. 5390 should be passed. This action would be in the best interests of the citizens of this state. Pay-to-Stay has strayed from its original goals. Due to the realities of being incarcerated, these liens and the costs of incarceration function as a punishment, not as a method of teaching responsibility. The incarcerated are severely underpaid for their labor and severely overcharged for the goods and services in a prison. Due to the prison economy, they are already essentially paying the costs of incarceration. This system thus does not teach fiscal responsibility, but is actually deeply unfair and damaging to the policy’s original intentions. This policy also undermines Connecticut’s reentry goals: taking away a person’s settlement, which was intended to make them whole from a loss, creates economic instability for people returning from prison. It also has adverse mental and physical health effects. The formerly incarcerated live with the fear of the lien being imposed on them at any time for a period of 20 years after they finish their sentences. Individuals who are currently incarcerated may have to make difficult decisions about seeking medical care, which can have severe physical impacts on them. The lien is also incredibly cost-inefficient: the lien only adds about \$6 million to the general fund, while it has an extreme impact on those in debt. DAS pursues amounts as small as \$3 on debts of over \$20,000. The collection of these debt is arbitrary, and often individuals are never given formal notice of the debt they are incurring by being in prison. Ultimately, the lien is a real threat to the property rights of those living in Connecticut: families have to make difficult choices about who can inherit their property when the state can confiscate it.

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<sup>40</sup> Jordan Fenster, *Racial Disparity in Connecticut Prisons on the Decline, Report Says*, CT News Junkie (2015).

Based on these facts and this research, we strongly support H.B. 5390.

Sincerely,

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Ryanne Bamieh, YLS '23

Jenny E. Carroll, Director,  
Arthur Liman Center for Public Interest Law  
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